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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES** PL 1
WASHINGTON, D. C. 20548

FILE: B-190148

DATE: February 14, 1978

MATTER OF: Kaiser Aerospace & Electronics
Corporation

DIGEST:

Determination to reject bid as nonresponsive because descriptive literature furnished did not clearly demonstrate bidder's compliance with specifications was proper since descriptive literature was necessary for bid evaluation and to assure conformance with specifications.

Kaiser Aerospace & Electronics Corporation (Kaiser) has protested the award of a contract for furnishing, installing, and maintaining a Centralized Aircraft Support System (CASS) to Value Engineering Company (Value) under invitation for bids (IFB) No. F41689-77-B-0135, issued by Randolph Air Force Base, Texas.

Four bids were received and were publicly opened on August 26, 1977. The low bid was submitted by Kaiser. However, Kaiser's bid was determined to be nonresponsive for failure to acknowledge six amendments and for failure to provide adequate descriptive literature as required by the solicitation. Therefore, award was made to Value, the second low bidder.

Kaiser's protest, dated September 20, 1977, is based upon two major allegations. First, Kaiser maintains that the reasons cited by the contracting officer to establish that Kaiser's bid was not responsive were incorrect, as these were based upon descriptive literature requirements which were not required by the solicitation. Second, Kaiser claims that its bid should not have been determined nonresponsive for failure to acknowledge the six amendments, because amendment 2 was acknowledged prior to bid opening, constructive acknowledgement of

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amendments 1, 4, 5 and 6 were reflected in its bid, and amendment 3, not acknowledged, did not affect quantity, quality or price.

The Air Force has reported that it agrees with Kaiser's analysis that its failure to acknowledge the amendments could be considered a minor informality pursuant to Armed Services Procurement Regulation (ASPR) § 2-405(iv) (1976 ed.). Therefore, this issue is moot.

The solicitation required that descriptive literature be provided as follows:

"4. REQUIREMENT FOR DESCRIPTIVE LITERATURE

"(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purpose of bid evaluation and award, details of the products the bidder proposes to furnish as to:

"1. The design of the air system to include as a minimum:

"(i) Compressor ratings and quantity.

"(ii) Compressor drive motor ratings.

"(iii) Air pipe distribution system including pipe sizes, valve locations, safety devices.

"(iv) Air distribution control system.

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"2. The design of the 400Hz electrical system to include as a minimum:

"(i) Generator ratings and quantity.

"(ii) Generator drive motor ratings.

"(iii) Electrical wiring diagram including wire sizes, component ratings, safety devices.

"(iv) Electrical control system.

"3. A detailed description of the operation of the aircraft starting air and 400 Hz electrical power systems.

"4. Reliability criteria on major components.

"(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids."

According to Kaiser's analysis, "the IFB simply required that the descriptive literature must contain information pertaining to * * * [the details quoted above]." This interpretation was apparently obtained by its focus on the phrase "as a minimum" in the descriptive literature requirements.

The report of the procuring agency states that it does not concur with Kaiser's interpretation of the requirements. The Air Force report emphasizes that the requirement

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states that the descriptive literature was required to establish details of the product offered, including the design of the air and electrical system, and that failure of the literature to show that the product conforms to the specifications would require rejection of the bid. The Air Force states that the "information provided in the Kaiser bid package does not provide sufficient details of the design of the system to show that the product offered will meet the specifications and other requirements of the IFB." (Emphasis in original.) Therefore, the Air Force interprets its Descriptive Literature clause as requiring a bidder to submit sufficient literature to demonstrate that the product conforms to all specifications and requirements of the IFB. We do not find this interpretation to be consistent with past decisions of our Office or ASPR § 2-202.5(d).

An agency has the primary responsibility to draft specifications reflecting its minimum needs as well as determining that products offered meet those specifications. Thus, an IFB may require that Descriptive data accompany each bid for the purpose of bid evaluation, if such data is needed to aid the agency in determining whether the product offered meets the specifications and in concluding what the Government would be binding itself to purchase by the making of an award. If the need for descriptive literature can be justified, the invitation must clearly establish the nature and extent of the descriptive material asked for, the purpose intended to be served by such data, and whether all details of such data will be considered an integral part of the awarded contract. If a bid fails to comply with a proper descriptive literature requirement, the bid ordinarily will be rejected as nonresponsive. 53 Comp. Gen. 622 (1973).

The Air Force has justified its requirement for descriptive literature, as follows, in its report to our Office on the protest:

"* * * the CASS was intended to incorporate a number of commercially available components; and with this in mind,

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the IFB specifications were intended generally as performance specifications necessitating prospective bidders to furnish comprehensive descriptive literature in order to effectively evaluate their ability to meet these performance criteria."

This Office has held that an IFB must state definitely the components concerning which descriptive data is required. Even if the data requirement is justified and descriptive literature is required to determine bid responsiveness, an IFB is defective if it does not clearly establish in the greatest detail practical the nature and extent of descriptive data needed. 53 Comp. Gen., supra.

Accordingly, based on the above, we do not find that a bidder was required to show by its submitted descriptive literature that its system met all of the specifications contained in the IFB, but only to show compliance with the items listed under paragraphs 4(a)(1) through 4(a)(4).

However, we find that the literature submitted by Kaiser did not show compliance with the specification concerning "compressor ratings and quantity." The Air Force report contains the following analysis of the Kaiser literature in this area:

"(3) The Kaiser bid package, Section B, Air System Design/Sizing, Item 3, states: 'System utilizes three commercially produced compressors with set point of 135 PSIG. Each compressor is rated at 42.4 lb/min air. Compressor drive motor rating is 150 horsepower.' The IFB, Section F, para 4.2.1 Compressors, 4.2.1.1 Sizing, pages 26 and 75 state: 'Compressors shall be of sufficient size to start two T-38A aircraft simultaneously every two minutes throughout the flying period. The optimum starting air for the J85-GE-5 engines (two each) used in T-38A aircraft

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is 110 ± 10 PPM (pounds per minute) at 55 ± 5 PSIA for each engine. Normal starting time for each engine is 20 seconds. There is normally 20 seconds' delay between the first and second engine start. Compressors with less capacity than required to start one engine may be used. However, there shall be a sufficient number of compressors to provide the required capacity and have a surge capability to motor a J85-GE-5 engine for an additional two minutes in case of a hot or no start condition plus meet the redundancy requirement of specification 4.1.3.' To meet this sizing requirement would require a combination of compressors with a capacity to provide sufficient flow to start two J85-GE-5 engines simultaneously. Each engine requires a minimum of 100 pounds per minute of air flow. The compressors would have to provide 200 pounds per minute of air flow to meet this requirement. The three compressors proposed in the Kaiser bid package would provide 127.2 pounds per minute of air flow ($42.4 \text{ lb/min} \times 3 \text{ ea}$). This does not meet the IFB sizing requirement."

We have held that where descriptive literature was necessary for bid evaluation and to assure conformance with specifications, rejection of a bid as nonresponsive for failure to demonstrate compliance with the specifications was proper. Austin-Campbell Co., B-189032, September 28, 1977, 77-2 CPD 236.
Fabcraft Inc., dba FABCO, B-186973, November 5, 1976, 76-2 CPD 384.

Accordingly, the protest is denied.

Deputy


Comptroller General
of the United States